



ARKANSAS JUDICIARY

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Rule 23.1. Actions By Shareholders.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

Reporter's Notes to Rule 23.1: - 1. Rule 23.1 is identical to FRCP 23.1.

2. Both this and FRCP 23.1 are silent concerning the "security for expenses" provision of many state business corporation acts, including that found in Ark. Stat. Ann. 64-223(c)(d) (Repl. 1962). Since the decision in *Cohen v. Beneficial Industrial Loan Corporation*, 337 U.S. 541, 69 S. Ct. 1221 (1949), it has generally been considered that such acts were substantive in nature and should be followed in diversity actions in federal courts. Consequently, the adoption of this rule does not supersede or repeal the "security for expenses" provision found in the Arkansas Business Corporation Act. The same is also true with regard to the matter of attorney's fees, which under Ark. Stat. Ann. 64-223 (Repl. 1962), may be awarded to either plaintiff or defendant, depending upon which prevailed in the action. See Wright & Miller, *Federal Practice And Procedure*, Section 1841.

3. This rule follows prior Arkansas law as found in Ark. Stat. Ann. 64-223(f) (Repl. 1962) which required court approval to dismiss or compromise a derivative action. This rule goes further, however, and requires that notice of a proposed dismissal or compromise be given to other shareholders or members in such manner as the court may direct. This is simply to afford an opportunity for other stockholders to voice objection to any proposed settlement or dismissal.

Associated Court Rules:

Rules of Civil Procedure

Group Title:

IV. Parties

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